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INTERSTATE COMMERCE COMMISSION

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**CONDITIONAL SALE AGREEMENT**

Dated as of June 15, 1970

between

**BETHLEHEM STEEL CORPORATION**

and

**C. I. T. CORPORATION**

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**AGREEMENT AND ASSIGNMENT**

Dated as of June 15, 1970

between

**BETHLEHEM STEEL CORPORATION**

and

**THE FIRST PENNSYLVANIA BANKING AND  
TRUST COMPANY,**

*As Agent*

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**CONDITIONAL SALE AGREEMENT** dated as of June 15, 1970, between the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof) and C. I. T. CORPORATION, a New York corporation (hereinafter sometimes called the Company), acting through its agent, C. I. T. LEASING CORPORATION, a Delaware corporation.

WHEREAS the Manufacturer has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS the Company is executing a lease of the Equipment as of the date hereof to Grand Trunk Western Railroad Company, as lessee (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS the Lessee is assigning to the Company, pursuant to an Assignment of Purchase Agreement as of the date hereof in substantially the form annexed hereto as Annex D, a certain purchase agreement between the Lessee and the Manufacturer covering the Equipment;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be new standard-gauge railroad equipment constructed in accordance with the specifications

referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however*, that no delivery of any unit of the Equipment shall be made until this Agreement, the Lease and any assignments thereof have been filed pursuant to Section 20c of the Interstate Commerce Act. The Manufacturer represents and warrants that, to the best of its knowledge, at the time of the delivery of the Equipment to the Company, the Equipment will be new standard-gauge railroad equipment and no amortization or depreciation will have been claimed by any person with respect thereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for

pursuant to Article 3 hereof on or before December 15, 1970 (unless such date is extended by the Company and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion, the Vendor and the Company shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Lessee), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative of the Company for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company, conform to the Specifications and to all applicable Interstate Commerce Commission and Department of Transportation requirements and specifications and are marked in accordance with the provisions of Article 8 hereof; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 3 of Annex A hereto.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. The base price is subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Lessee. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) of the units of the Equipment for which settlement has theretofore and is then being made, would, but for the provisions of this sentence, exceed \$1,119,484, the Manufacturer (and any assignee of the Manufacturer) and the Company will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, specified by the Company. as will, after giving effect to such exclusion, reduce such aggregate of the Invoiced Purchase Prices to not more than \$1,119,484.

The Equipment shall be settled for on one Closing Date, fixed as hereinafter provided; *provided, however*, that, if there shall at any time have been delivered to and accepted by the Company units of the Equipment and the Manufacturer shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units of the Equipment for a period of 30 days or more following the last date of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional group of Equipment for the purpose of settlement (the Equipment being settled for on each such Closing Date being hereinafter called a Group). The term "Closing Date" with respect to each Group shall mean such date not more than 10 business days following presentation by the Manufacturer to the Company of the invoice and the Certificate or Certificates of Acceptance for such Group, as

shall be fixed by the Manufacturer and the Lessee by telephonic or telegraphic notice (confirmed in writing) to the Company and the Vendor at least five business days prior to the Closing Date designated therein (or such lesser number of days as may be agreed to by the Company and the Vendor). The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Subject to the conditions specified in the last paragraph of this Article 3, the Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) On the Closing Date with respect to each Group
  - (i) an amount equal to 24.41% of the aggregate Purchase Price of any units of the Equipment included in such Group with road numbers GTW 303326-303344, inclusive (hereinafter called Section 184 Units), and an amount equal to 14.50% of the aggregate Purchase Price of any units of the Equipment included in such Group with road numbers GTW 303345-303393, inclusive (hereinafter called Section 167 Units), plus (ii) the amount by which (x) 75.59% of the aggregate Purchase Price of all Section 184 Units for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor, plus 85.50% of the aggregate Purchase Price of all Section 167 Units for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$926,172 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Price of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (such portion being herein called the Conditional Sale Indebtedness) shall be payable on December 15, 1975, and subsequent instalments shall be payable semiannually thereafter on each June 15 and December 15, to and including June 15, 1985 (or, if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness in respect of a Group shall bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at the rate of  $10\frac{1}{4}\%$  per annum and such interest shall be payable, to the extent accrued, on June 15 and December 15 of each year, commencing December 15, 1970. The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Lessee promptly after each Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Company will pay interest at the rate of 11% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying the Conditional Sale Indebtedness prior to the dates it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price of each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an Agreement and Assignment (hereinafter called the Assignment) between the Manufacturer and The First Pennsylvania Banking and Trust Company, as Agent (hereinafter called the Assignee).

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the following conditions:

(a) no event of default under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default, shall have occurred and be continuing;

(b) prior to the first Closing Date hereunder, there shall not have been enacted, nor shall there have been



introduced in Congress, a bill seeking enactment of, nor shall there have been officially announced by an administration spokesman the intention of the administration to seek enactment of, any amendment to the Internal Revenue Code of 1954, as amended, which would (i) operate to reduce the amount of accelerated depreciation allowed under Section 167(b) of such Code in respect of the Section 167 Units or (ii) operate to reduce the amount of amortization allowed under Section 184 of such Code in respect of the Section 184 Units (it being the duty of the Company promptly to give notice to the Manufacturer and the Assignee of any enactment, introduction or announcement of which the Company has knowledge which, in the opinion of the Company, is within the purview of this subparagraph (b)) in respect of which the Company shall not have been indemnified to its satisfaction; and

(c) the Company shall have received signed counterparts of the documents listed in Sections 5(a), (b), (c), (d), (e), (g), (h), (i) and (j) of the Assignment and shall concurrently receive the opinions of counsel required by §§ 14 and 15 of the Lease and such other documents as the Company may reasonably request.

Notwithstanding any other provisions of this Agreement, it is understood and agreed by the Vendor that liability of the Company for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payment to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof, shall not exceed an amount equal to the income and proceeds from the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean, if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Company at any time after

such event and during the continuance thereof: (a) all amounts of rental (or damages under clause (i) of subparagraph (b) of § 9 of the Lease) and amounts in respect of Casualty Occurrences paid for or with respect to the Equipment pursuant to the Lease and payments equivalent to such amounts and (b) any and all payments or proceeds received by the Company for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and shall mean at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Company and as shall equal the portion of the Conditional Sale Indebtedness and/or interest thereon then due and payable or due and payable on the June 15 or December 15 next succeeding the date such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payment (including payments in respect of Casualty Occurrences) then due and payable under this Agreement. Nothing contained herein shall constitute an assignment of, or lien, charge or encumbrance against, the "income and proceeds from the Equipment" or any right, title or interest of the Company under or arising out of the Lease, or of or against any payments received or to be received by the Company under or in connection with the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Vendor to proceed against the Equipment or the Lessee or any guarantor of the obligations of the Lessee as provided for herein or in the Lease or otherwise for the full unpaid Purchase Price of the Equipment and interest thereon. The Vendor agrees, however, that in the event it shall obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to

the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain security title to and property in the Equipment until the Company shall have made all the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company or the Lessee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment (except such as can be removed without damage to and without impairing the originally intended function or use of the Equipment, including, without limitation, racks or partitions, which have been added to the Equipment by the Company or the Lessee, the cost of which is not included in the Purchase Price of the Equipment and which are not required for the operation or use of the Equipment) and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens, security interests and other encumbrances created or retained hereby

and deliver such instruments to the Company at its address specified in Article 22 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificates within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), fully inform the Vendor in regard thereto. On the next succeeding June 15 or December 15, whichever is the earlier, the Company shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to the *pro rata* prepayment of each instalment of the

Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of Conditional Sale Indebtedness represented by each such instalment) and the Company will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, calculated as provided in the fourth paragraph of Article 3 hereof.

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of title to and property in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in such Group in like ratio as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

ARTICLE 6. *Maintenance and Repairs.* The Company agrees that, at its own cost and expense, it will maintain and

keep each unit of the Equipment in good order and repair, ordinary wear and tear excepted.

ARTICLE 7. *Reports and Inspections.* On or before March 1 in each year, commencing with the year 1971, the Company will cause to be furnished to the Vendor, if the Vendor shall make written request therefor, an accurate statement as of the preceding January 1 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 8 hereof have been preserved or replaced.

ARTICLE 8. *Identification Marks.* The Company will cause each accepted unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words, "THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, PHILADELPHIA, PENNSYLVANIA, AGENT-OWNER", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control

or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Company may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Company, the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of their interests therein.

ARTICLE 9. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal, Canadian (Dominion or Provincial) or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes [except gross receipts taxes in the nature of or in lieu of sales taxes]) license fees, charges, fines or penalties of any kind (hereinafter called impositions) hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay

on demand in addition to the Purchase Price of the Equipment. The Company will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however*, that the Company shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor on presentation of invoices therefor.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Company will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Company may, in good faith, contest the validity or application of any



such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 11. *Possession and Use.* The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Company, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; *provided, however*, that the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies of, the Vendor under this Agreement. The Vendor will not terminate or impair the Lessee's possession or use of the Equipment subject to the Lease so long as the Lessee is not in default under the Lease. The Company hereby agrees that it will not exercise any of the remedies provided in the case of any Event of Default under and as defined in the Lease unless it shall notify the Vendor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default shall have occurred and be continuing hereunder, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used by the Lessee or by any affiliated corporation upon the lines of railroad owned or operated by the Lessee or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and the Equipment may be used upon other railroads in the usual interchange of traffic (if such interchange is

customary at the time), but only upon and subject to all the terms and conditions of this Agreement. The Equipment may be subleased by the Lessee to such subsidiary or affiliated corporations of the Lessee or Canadian National Railway Company as are, at the time such sublease is executed and in effect, domestic railroad corporations incorporated under the laws of any state of the United States of America or the District of Columbia; *provided, however*, that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and all terms and conditions hereof. The Company may also lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement.

The Company agrees that during the period that any portion of the Conditional Sale Indebtedness in respect of any Group remains outstanding and unpaid, any use of any unit of the Equipment outside the United States of America will be limited to use in Mexico, in the Province of Ontario, Canada or in other Provinces and Territories of Canada so long as the aggregate of the Purchase Price of the units of the Equipment in use in Mexico and in such other Provinces and Territories does not, at any time, exceed 10% of the aggregate of the Purchase Price of the Equipment. In the event that the foregoing limitation with respect to use of the Equipment in such other Provinces and Territories of Canada becomes inapplicable in accordance with Article 20 hereof, the 10% limitation shall remain applicable to Equipment used in Mexico.

ARTICLE 12. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge, security interest or encumbrance upon the Equipment, or any unit thereof, equal or superior to the

title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. *Indemnities; Warranty of the Manufacturer.* The Company agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor; *provided, however*, that this indemnity shall not benefit the Manufacturer in respect of such events occurring after the assignment by the Manufacturer of its interests in this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Item 3 of Annex A hereto.

ARTICLE 14. *Patent Indemnities.* Except in cases of designs specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Company and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Lessee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right. The Company will give notice to the Manufacturer of any claim known to the Company on the basis of which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. *Assignments.* The Company will not assign or transfer its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder, but subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights against the Lessee).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to re-

ceive the payments herein provided to be made by the Company, may be assigned by the Vendor and reassigned by its assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 13 and 14 hereof and Annex A hereto, or relieve the Company of its obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 9 and 13 hereof or in Annex A hereto or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company of the notification of any such assignment, all payments thereafter to be made by the Company hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Company recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition,

that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of security title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the names and word or words to be marked on each side of each unit of the Equipment so as to indicate the title of an assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on railroad equipment covered by conditional sale agreements. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent or trustee in case the first assignee is an agent or trustee) shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee in case the first assignee is an agent or trustee) shall be borne by the subsequent assignee.

In the event of any such assignment, the Company will, in connection with settlement for any Group of the Equipment, deliver to the assignee of the units of the Equipment in such Group, at least five business days prior to the Closing Date in respect of such Group (or such lesser number of days as such assignee shall agree to), all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement (except for any opinion of counsel for the assignee), in such number of counterparts as may reasonably be requested.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for 10 days; or

(b) The Company shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed

or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(e) An event of default shall occur under the Lease;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee referred to in Article 11 hereof, cause the Lease immediately upon such notice to terminate (and the Company acknowledges the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Purchase Price and such interest shall bear interest from the date of such declaration at the rate of 11% per annum and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid



balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company (subject to the provisions of the last paragraph of Article 3 hereof) wherever situated.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default or notice of termination of the Lease by notice to the Company in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no Declaration of Default or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor (subject to the rights of the Lessee under the Lease referred to in Article 11 hereof) take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Company any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Company or anyone having such possession and use and for such purpose may enter upon the premises of the Company or the Lessee or wherever the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or the Lessee, with or without process of law.

In case the Vendor shall demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Vendor, the Company shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall reasonably be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same. For such purpose the Company agrees to cause to be furnished, without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Company by telegram or registered mail, addressed as provided in Article 22 hereof,

and to any other persons to whom the law may require notice within 30 days after a Declaration of Default. In the event that the Vendor should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Company in the Equipment will thereupon terminate and all payments made by the Company may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Company, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company; and *provided, further, however*, that if the Company or any other person notified under the terms of this paragraph shall object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

The Vendor, with or without the retaking of possession thereof, at its election and upon reasonable notice to the Company and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Lessee) claiming by, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if prior to such sale or prior to the making of a con-

tract for such sale, the Company should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine; *provided, however*, that the Company shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale, it shall be subject to the right of the Company to purchase or provide a purchaser within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Company hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company (subject to the provisions of the last paragraph of Article 3 hereof) shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company.

The Company (subject to the provisions of the last paragraph of Article 3 hereof) will pay all reasonable

expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to

alter or affect the Company's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* Prior to the delivery and acceptance of any unit of the Equipment, the Company will cause this Agreement, any assignments hereof by the Company and any supplements hereto and thereto, and prior to the settlement for such unit, the Company will cause any assignment hereof by the Manufacturer and any supplement thereto, in each case (i) to be filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, (ii) to be deposited in the office of the Registrar General of Canada (and will cause the required notice of such deposit forthwith thereafter to be published in the *Canada Gazette*) and (iii) to be filed in the office of the Provincial Secretary of the Province of Ontario, Canada. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States and the Province of Ontario, Canada, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Company will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel. If the Vendor and the Company shall have been furnished opinions of counsel for the Lessee and of Cana-

dian counsel satisfactory to the Vendor and the Company that, upon the due deposit of this Agreement and of any assignments hereof in the office of the Registrar General of Canada and upon the giving of notice of such deposit in the *Canada Gazette* in accordance with Section 148 of the Railway Act of Canada, no other act, filing, recording or deposit (or giving of notice) in respect of this Agreement or any assignments hereof is necessary in order to protect the rights hereunder of the Vendor and in and to the Equipment in Canada or any Province or Territory thereof, the limitations in the last paragraph of Article 11 hereof with respect to the use of the Equipment in Canada shall no longer be applicable.

ARTICLE 21. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or trustee, if the first assignee is an agent or trustee), or any instrument supplemental thereto, including all reasonable fees and expenses of special counsel for the first assignee of this Agreement. For the purposes of this Article 21, if the first assignee is an agent or trustee, then any successor thereto shall be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to any party designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses.

(a) the Company: 650 Madison Avenue, New York, N. Y. 10022, *attention of* the President;

(b) the Manufacturer: the address specified in Item 2 of Annex A hereto;



(c) any assignee of the Vendor, or of the Company: such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief place of business is in New York.

ARTICLE 23. *Satisfaction of Undertakings.* The obligations of the Company under Articles 6, 7, 8, 9, 10, 12, 13 and the last paragraph of Article 11 and second paragraph of Article 17 hereunder shall be deemed in all respects satisfied, so long as the Lease is in effect, by the Lessee's undertakings contained in §§ 4, 5, 7, 8, 10 and 11 of the Lease. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they may constitute the basis for an event of default hereunder pursuant to Article 16.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement and the Annexes hereto exclusively and completely state the rights and agreements of the Vendor and the Company with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Company.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, the appli-

cable recording laws of Canada and of the Provinces and Territories thereof and such additional rights arising out of the filing, recording, registering or depositing hereof and of any assignment hereof and out of the marking on the Equipment as shall be conferred by the laws of the several jurisdictions in which the Equipment may be located and in which this Agreement or any assignment hereof shall be filed, recorded, registered or deposited.

ARTICLE 26. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 27. *Execution.* This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of June 15, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or officials thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

BETHLEHEM STEEL CORPORATION,

[CORPORATE SEAL]

by ..... *J. H. Walker* .....  
Vice President

Attest:

..... *G. L. Frankfield* .....  
Assistant Secretary

C. I. T. CORPORATION,

by C.I.T. LEASING CORPORATION,  
as Agent,

by ..... *J. M. Phillips* .....  
Vice President

[CORPORATE SEAL]

Attest:

..... *Henry Lewis* .....  
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA } ss.:  
COUNTY OF NORTHAMPTON

On this 15<sup>th</sup> day of July, 1970, before me personally appeared **J. H. WALKER**, to me personally known, who, being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

*Evelyn S. Marks*  
.....  
Notary Public My Commission Expires  
City of Bethlehem  
Northampton County  
October 13, 1970

STATE OF NEW YORK } ss.:  
COUNTY OF NEW YORK

On this 17<sup>th</sup> day of July, 1970, before me personally appeared *J. J. McPhillips*, to me personally known, who, being by me duly sworn, says that he is a Vice President of C. I. T. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

*Ruth E. Greene*  
.....  
Notary Public  
RUTH E. GREENE  
Notary Public, State of New York  
No. 03-1557810  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires March 30, 1971

## ANNEX A

- Item 1: Bethlehem Steel Corporation, a Delaware corporation.
- Item 2: 701 East Third Street, Bethlehem, Pennsylvania 18016.
- Item 3: The Manufacturer warrants that the units of the Equipment will be built in accordance with the Specifications, standards and requirements set forth or referred to in Article 1 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants that each unit of the Equipment will be free from defects in material (except as to specialities incorporated therein specified by the Lessee and not manufactured by the Manufacturer), workmanship or design (except as to designs specified by the Lessee and not developed by the Manufacturer) under normal use and service, the Manufacturer's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after delivery thereof, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. **This warranty is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose,** and the Manufacturer neither makes nor authorizes any other person to make for it any other such warranty in connection with the construction and delivery of the Equipment except as aforesaid.

The Manufacturer further agrees with the Company that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 3.

# ANNEX B

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Road Numbers (inclusive)	Unit Base Price	Total Base Price	Delivery
89'4" flush deck flat cars (Manufacturer's Proposal dated May 12, 1970)	DF 3400-223	Johnstown, Pennsylvania	68	GTW 303326-303393	\$16,463	\$1,119,484	Prior to July 30, 1970, at Johnstown, Pennsylvania